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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Sacramento Iribe-Flores,

13 Defendant.
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No. CR-04-00798-001-TUC-RM (EJM)

ORDER

15 On April 14, 2021, the Court found Defendant Sacramento Iribe-Flores guilty of
16 importation of 50 grams or more of methamphetamine and five kilograms or more of
17 cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), 960(b)(1)(B)(ii) and
18 960(b)(1)(H), and sentenced him to concurrent 48-month terms of imprisonment
19 followed by concurrent 3-year terms of supervised release. (Doc. 48.) Sentencing in the
20 case had originally been scheduled in October 2004, but Defendant escaped from custody
21 and failed to appear on that date. (Doc. 15; Doc. 43 at 4-5, 7, 17.)

22 Currently pending before the Court is Defendant's pro se Motion for Sentence
23 Reduction Under 18 U.S.C. § 3582(c)(1)(A). (Doc. 50.)¹ The Federal Public Defender
24 filed a Notice finding no basis for appointment of counsel (Doc. 51), and the Court
25 declines to appoint counsel. The Government did not respond to Defendant's pro se
26 Motion, and the deadline for doing so has expired.

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28 ¹ The Court will direct the Clerk of Court to seal Defendant's Motion, as it contains
sensitive information, including the full names of minors. *See* Fed. R. Crim. P. 49.1(a),
(d).

1 **I. Legal Standard**

2 A court may reduce a term of imprisonment upon a defendant's motion, after
 3 considering the factors set forth in 18 U.S.C. § 3553(a), if: (1) the defendant has fully
 4 exhausted his administrative remedies, (2) "extraordinary and compelling reasons"
 5 warrant the reduction, and (3) the reduction is consistent with applicable policy
 6 statements issued by the Sentencing Commission. 18 U.S.C. § 3582(c)(1)(A). A
 7 defendant exhausts his administrative remedies by appealing a failure of the Bureau of
 8 Prisons to bring a motion on his behalf or by the lapse of 30 days from the receipt of a
 9 request for compassionate release by the warden of the defendant's facility. *Id.*

10 The Ninth Circuit has held that the current version of U.S.S.G. § 1B1.13 is not an
 11 applicable policy statement for purposes of 18 U.S.C. § 3582(c)(1)(A) motions filed by a
 12 defendant. *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam). "The
 13 Sentencing Commission's statements in U.S.S.G. § 1B1.13 may inform a district court's
 14 discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding."
 15 *Id.* Therefore, the Court will rely on U.S.S.G. § 1B1.13 as persuasive but non-binding
 16 authority for purposes of evaluating the present Motion.

17 Both 18 U.S.C. § 3582(c)(1)(A) and U.S.S.G. § 1B1.13 direct courts to consider
 18 the sentencing factors set forth in 18 U.S.C. § 3553(a). U.S.S.G. § 1B1.13 further
 19 provides that a defendant's sentence may be reduced only if it is determined that the
 20 defendant is "not a danger to the safety of any other person or to the community, as
 21 provided in 18 U.S.C. § 3142(g)." The application notes to U.S.S.G. § 1B1.13 describe
 22 specific circumstances that present "extraordinary and compelling reasons" for a sentence
 23 reduction, including "[t]he death or incapacitation of the caregiver of the defendant's . . .
 24 minor children" and "[t]he incapacitation of the defendant's spouse . . . when the
 25 defendant would be the only available caregiver for the spouse." U.S.S.G. § 1B1.13, cmt.
 26 n.1.

27 The factors to be considered in determining a sentence under 18 U.S.C. § 3553(a)
 28 include "the nature and circumstances of the offense and the history and characteristics of

1 the defendant,” the sentencing range established by the Sentencing Guidelines, the need
 2 to avoid unwarranted sentence disparities among similarly situated defendants, and the
 3 need for the sentence imposed:

- 4 (A) to reflect the seriousness of the offense, to promote respect for the law, and to
 5 provide just punishment for the offense;
- 6 (B) to afford adequate deterrence to criminal conduct;
- 7 (C) to protect the public from further crimes of the defendant; and
- 8 (D) to provide the defendant with needed educational or vocational training,
 9 medical care, or other correctional treatment in the most effective manner.

10 18 U.S.C. § 3553(a).

11 The factors to be considered in assessing dangerousness under 18 U.S.C. §
 12 3142(g) include the nature and circumstances of the defendant’s offense; the weight of
 13 the evidence against the defendant; the nature and seriousness of the danger to any person
 14 or the community posed by the defendant’s release, and the defendant’s history and
 15 characteristics, including “character, physical and mental condition, family ties,
 16 employment, financial resources, length of residence in the community, community ties,
 17 past conduct, history relating to drug or alcohol abuse,” and criminal history. 18 U.S.C. §
 18 3142(g).

19 **II. Discussion**

20 In his Motion, Defendant avers that he submitted a request for compassionate
 21 release to the warden of the facility in which he is incarcerated on October 12, 2021, and
 22 that the request was denied by the warden the following day. (Doc. 50 at 3.) Defendant
 23 also indicates, in contradictory fashion, that he did not receive a response from the
 24 warden. (*Id.*) The Court will assume without deciding that Defendant fully exhausted his
 25 administrative remedies prior to filing his pro se Motion.

26 In his Motion, Defendant states that his wife has been battling cancer since 2016.
 27 (Doc. 50 at 5.) He avers that, at the time of his sentencing hearing in this case, his wife’s
 28 cancer was in remission, but it recently returned and her doctor states that she has a very
 short time to live. (*Id.* at 5, 18.) Defendant requests early release so that he can be with
 his wife and children. (*Id.* at 5, 18-19.) Defendant further states that, if released, he is

1 subject to an order of deportation or an ICE detainer, and he intends to reside with his
2 wife and children in Mexico. (*Id.* at 2, 8.)


3 After reviewing Defendant's pro se Motion and the record, the Court finds that
4 Defendant's sentence remains appropriate in light of the sentencing factors set forth in 18
5 U.S.C. § 3553(a). The Court is sympathetic to Defendant's concern about his wife's
6 cancer diagnosis. However, the Court considered Defendant's wife's battle with cancer
7 when sentencing Defendant. Defense counsel discussed Defendant's wife's cancer
8 diagnosis in Defendant's sentencing memorandum (Doc. 44 at 2, 6) and during
9 Defendant's sentencing hearing. Furthermore, although Defendant states in his pending
10 Motion that his wife's cancer was in remission at the time of his sentencing hearing (Doc.
11 50 at 18), his Presentence Report prepared prior to the hearing reflects that Defendant
12 reported that his wife's cancer had returned and that she was undergoing chemotherapy
13 (Doc. 43 at 8). Because the Court already considered Defendant's wife's cancer
14 diagnosis when sentencing Defendant, because Defendant does not indicate that his wife
15 is incapacitated such that she is unable to care for their children, and because Defendant
16 identifies no other circumstances warranting a sentence reduction, the Court will deny
17 Defendant's Motion. Defendant is granted leave to re-file the Motion if his wife passes
18 away or becomes incapacitated such that she is unable to care for Defendant's children.

19 **IT IS ORDERED** that the Clerk of Court is directed to seal Defendant's pro se
20 Motion for Sentence Reduction (Doc. 50).

21 **IT IS FURTHER ORDERED** that Defendant's pro se Motion for Sentence
22 Reduction (Doc. 50) is **denied without prejudice**.

23 Dated this 14th day of December, 2021.

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Honorable Rosemary Márquez
United States District Judge